



Public Employees for Environmental Responsibility

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October 18, 2017

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

RE: PRIVACY ACT AND FREEDOM OF INFORMATION REQUEST

Dear FOIA Officer:

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, as amended, and the Privacy Act, 5 U.S.C. 552a, Public Employees for Environmental Responsibility (PEER), on behalf of Dr. Elizabeth Southerland (see attached Privacy Act statement and authorization to release information to PEER from Dr. Southerland), is requesting information concerning U.S. Environmental Protection Agency (EPA) communications regarding her retirement from EPA and her public statements about the agency. Specifically, we request the following:

- All internal communications and external communications with any news media representatives concerning Dr. Southerland from July 31, 2017 to the present.

For any documents or portions of documents that you block release due to specific exemption(s) from the requirements of the Freedom of Information Act or the Privacy Act, please provide an index itemizing and describing the documents or portions of documents withheld. The index should, pursuant to the holding of Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), provide a detailed justification for claiming a particular exemption that explains why each such exemption applies to the document or portion of a document withheld.

To the extent that EPA needs to perform a detailed review, PEER requests that all fees be waived because “disclosure of the information is in the public interest . . . and is not primarily in the commercial interest of the requestor” (5 U.S.C. 552 (a) (4)(A)):

1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government.

The FOIA/Privacy Act request is, by its terms, limited to identifiable activities of EPA and its employees.

2. For the disclosure to be “likely to contribute” to the understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request.

In the wake of Dr. Southerland’s retirement from EPA, its Office of Public Affairs made statements to the media questioning the veracity of her statements and motivations for making them.

The requested material would help the public understand how, and from what framework, the Administrator, his political aides, and media operation disparage the truthfulness and reputation of a distinguished employee. The request would also allow the public to understand the extent to which tax dollars are used to support a political war-room style media operation.

3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requestor or a narrow segment of interested persons.

Dr. Southerland’s statements upon retirement and her subsequent interviews have garnered national media coverage.

The scope of her statements embrace a number of high-profile actions recently taken by EPA – actions which potentially affect the public health of millions of Americans. The requested materials would help the public at large to see if the current EPA leadership treats reports of misconduct, lack of scientific integrity, and other matters seriously or dismisses such statements out of hand, even when these statements are made by senior employees who were eyewitnesses to these events.

The request would also allow the public at large see whether information about an employee or retiree that are protected by the Privacy Act is being improperly used in an attempt to discredit that employee or retiree.

PEER intends to provide the requested information to the general public through —

- Release to the news media;
- Posting on the PEER web page which draws between 1,000 and 10,000 viewers per day; and
- Publication in the PEER newsletter that has a circulation of approximately 20,000, including 1,500 environmental journalists.

PEER has a long track record of attracting media and public attention to the internal workings of EPA.

4. The disclosure must contribute “significantly” to public understanding of government operations or activities.

The material will allow the public to see the decision-making process employed by EPA political staff in crafting public attacks on Dr. Southerland. This will also enable the public to understand whether confidential information about an employee or retiree is being illegally shared in an effort to create media spin.

This, in turn, will help the public understand the professional and reputational risks EPA employees are taking if they speak out against current EPA leadership and policies.

The nature of the information should shed also direct light on the quality, openness, and integrity of EPA leadership.

5. The extent to which disclosure will serve the requestor's commercial interest.

Disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation's resources and with supporting professional integrity within public land management and pollution control agencies. To that end, PEER is designated as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code.

6. The extent to which the identified public interest in the disclosure outweighs the requestor's commercial interest.

As stated above, disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation's resources and with supporting professional integrity within public land management and pollution control agencies. To that end, PEER is designated as a tax-exempt organization under section 501 (c) (3) of the Internal Revenue code.

If you have any questions about this FOIA request, please contact me at (202) 265-PEER (7337). I look forward to receiving the agency's final response within 20 working days.

Cordially,



Paula Dinerstein
Senior Counsel